

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MJ HOFFMAN AND ASSOCIATES, LLC,
Plaintiff

v.

COMMUNICATION SALES TECHNIQUES,
LLC, and TIMOTHY HALLER, individually and as
a manager of Communication Sales Techniques,
LLC,
Defendants

Civil Action No. _____

**COMPLAINT
JURY TRIAL DEMANDED**

INTRODUCTION

This action is brought by MJ Hoffman and Associates, LLC (“MJ Hoffman & Associates”) against Communication Sales Techniques, LLC (“Communication Sales Techniques”), and Timothy Haller (“Haller”) (collectively “Defendants”) seeking redress for infringement of copyrights and trademarks.

PARTIES

1. Plaintiff, MJ Hoffman and Associates, LLC is a limited liability company organized under the laws of the Commonwealth of Massachusetts with a principal place of business located at 9 Bartlet Street, Suite 355, Andover, Massachusetts 01810.

2. Defendant, Communication Sales Techniques, LLC, is a limited liability company organized under the laws of the Commonwealth of Massachusetts with a principal place of business at 1186 Old Marlboro Road, Concord, Massachusetts 01742.

3. Upon information and belief, Defendant Timothy Haller, resides at 1186 Old Marlboro Road, Concord, Massachusetts 01742.

4. Upon information and belief, Defendants Communication Sales Techniques and Haller operate a business known as “Sales Gauge.”

JURISDICTION AND VENUE

5. This action arises under the United States Copyright Act, 17 U.S.C. § 101 *et seq.* and the Trademark Act of 1946, as amended, 15 U.S.C. § 1051 *et seq.* This Court has original subject matter jurisdiction over this Complaint pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1338(a) (jurisdiction over copyright and trademark actions).

6. This Court has personal jurisdiction over Haller because he resides within the Commonwealth of Massachusetts.

7. This Court has personal jurisdiction over Communication Sales Techniques because it is a Massachusetts corporation and because it conducts business in Massachusetts. Additionally, Communication Sales Techniques is headquartered in Concord, Massachusetts; and the unlawful conduct alleged in this Complaint occurred in, was directed to, and emanated from Massachusetts.

8. Venue is proper in this Division because Defendants reside in and maintain headquarters in this Division and the injuries to Plaintiff arose in this Division.

FACTS

Background on the Parties

The Plaintiff

9. Morton Jeffrey Hoffman (“Hoffman”) is a renowned sales executive, educator, entrepreneur, as well as the Manager and founder of MJ Hoffman and Associates, LLC (“MJ Hoffman & Associates”). Hoffman teaches and consults on sales, sales management and sales operations.

10. Hoffman has more than 25 years of experience training sales teams and executives. Before starting his own sales training business, Hoffman was a sales management team director at Akamai Technologies, where he was responsible for leading and managing a forty person sales organization.

11. On August 6, 2002, Hoffman founded Basho Strategies, Inc. (“Basho Strategies”). Basho Strategies was a Massachusetts corporation that provided business and management consulting services, including sales and management training programs. Hoffman was President and CEO of Basho Strategies for five years, during which time he developed a series of training manuals used to train sales and management teams.

12. On November 21, 2007, Hoffman founded Basho Technologies, Inc. (“Basho Technologies”). Basho Technologies, a Delaware corporation, also provided sales training and management consulting services.

13. On November 28, 2007, Basho Strategies merged into Basho Technologies. As part of this merger, Basho Strategies’ assets were transferred to Basho Technologies.

14. From 2002 to 2008, as President and CEO of Basho Strategies and later Basho Technologies (collectively “Basho”), Hoffman developed sales and management training courses and taught them to thousands of professionals. Basho’s clients hired Hoffman to train their sales and management teams, and to provide business consultation on sales processes.

15. In 2008, Hoffman left Basho Technologies and started MJ Hoffman & Associates. Through MJ Hoffman & Associates, Hoffman has continued to provide sales and management training and business consultation to professionals. At MJ Hoffman & Associates, Hoffman’s clients have included individuals as well as public and private corporations. Hoffman has also

conducted public speaking and training events and workshops designed for sales professionals, sales managers, executives, business owners, and entrepreneurs.

Hoffman's Unique and Innovative Training Programs

16. In 2002, Hoffman created a unique, cost-efficient, and innovative method of training sales and management professionals. At the time, and even today, most sales and management training programs provided a "one-size-fits-all" type of training program. In this model, a client hires a sales training specialist, who then delivers a generic version of sales training lessons and techniques to the client's entire sales team.

17. In situations where budget is not a concern, clients could hire consultants such as Hoffman to design a customized set of training materials for the client's business. The drawback of this approach is the substantial increase in the cost of the consultant's services.

18. Hoffman's training materials were, and continue to be, unique for two reasons. The first is that the training programs are modular, which allows for flexibility and customization without the added cost of creating a personalized set of training materials for an individual client. The second unique element of Hoffman's training programs is the set of specific techniques and the manner in which they are taught which allows for live application and testing of the content during training sessions.

19. It is important to note that sales departments within organizations are often separated by function, such as by different types of customers or channels of trade. For example, a sales team could be comprised of an inside sales group, outside sales group, account management group, and government sales group. The skills required to excel within each of these groups are slightly different.

20. What led Hoffman to design his innovative modular approach to teaching sales and management teams was his recognition of the inefficiencies inherent in a “one-size-fits-all” training approach. Specifically, when a company invested in hiring an outside sales training consultant, the company had at least two expenses: (1) the cost of the consultant and (2) the lost productivity of the employees while they were being trained.

21. Before Hoffman designed his modular approach to sales and management training, sales and management professionals were typically trained as a single group, meaning they all attended the entire sales training program.

22. Hoffman’s training program changed that. With his modular approach, companies could pick and choose from an “a la carte” training menu the types of training that various groups of employees needed. Each of Hoffman’s modules can be taught individually, or as a unit. Hoffman’s programs allow customers to choose the skills they want their staff to learn or improve upon, and that also means the sales teams spend less time in training.

23. In addition, Hoffman’s unique techniques allow for live application and testing during training sessions, which means that sales teams spend less time away from customers.

24. In creating his modular training materials with techniques that allowed live application of its content, Hoffman provided his clients with flexibility, customization, and cost savings. Hoffman’s clients realized significant cost savings in at least three ways. First, they could create custom training programs that suited their company’s needs by concatenating only relevant training material. Second, they could target specific subdivisions within the sales and management teams to receive training in only those modules that were relevant for that group. Third, Hoffman’s techniques allowed sales teams to implement the training materials during the training sessions, thus reducing the sales team’s time away from its own customers. This

versatility allowed clients to save money on training, and more importantly, hone in on particular skill sets that it desired to improve for different divisions within a sales team.

Hoffman's Sales Training Materials

25. Hoffman's sales training program consists of seven modules, where each module teaches a specific sales skill in a particular order and arrangement. The seven sales training modules have the following titles: Take Command of Your Territory, Action is Power, The Winning Call, The Perfect Meeting, Bargain to Advance, Hammer it Closed, and The Secret of the Endless Cycle.

26. The first sales training module, Take Command of Your Territory, focuses on how a sales representative can create a "territory" to maximize sales leads. This module teaches techniques such as effective time management, prioritizing of sales accounts, and aggressive research techniques.

27. The second sales training module, Action is Power, focuses on prospecting, which involves the search for, and attempts to engage with, potential customers or buyers. In this module, Hoffman created a unique technique of prospecting which he calls "WHY YOU? WHY YOU NOW?" WHY YOU? WHY YOU NOW? teaches both aspects of prospecting: search for customers and engagement with customers. Hoffman also refers to this unique technique of prospecting by the acronym WYWYN. Both WHY YOU? WHY YOU NOW? and WYWYN are trade names.

28. Consumers in the sales training field have come to recognize Hoffman and MJ Hoffman & Associates as the source of WHY YOU? WHY YOU NOW? and WYWYN. The use of a trade name for a prospecting technique in the context of sales training was innovative

because trades names for prospecting techniques are not typically found within sales training programs.

29. Hoffman uses the marks WHY YOU? WHY YOU NOW? and WYWYN with a series of detailed communication techniques in a particular order and arrangement. The WHY YOU? WHY YOU NOW? and WYWYN technique provides sales professionals an effective method to efficiently and successfully search for and connect with customers.

30. MJ Hoffman & Associates owns a registered federal trademark for WHY YOU? WHY YOU NOW? A true and correct copy of the United States Patent and Trademark Office trademark registration certificate for WHY YOU? WHY YOU NOW? is attached hereto as Exhibit A. The goods and services description for this mark is “Training services in the field of sales,” which is part of International Class 41.

31. MJ Hoffman & Associates has applied for a federal trademark for WYWYN. The mark was published for opposition on January 13, 2015. A true and correct copy of the Trademark Official Gazette publication confirmation for the mark WYWYN is attached hereto as Exhibit B. The goods and services description for this mark is “Business management consulting in the nature of development of marketing and sales communication strategies and techniques in relation to business promotion and sales,” which is in International Class 35, and “Business training consultancy services; Training services in the field of sales,” which is in International Class 41. A true and correct copy of the Trademark Snap Shot Publication for WYWYN is attached hereto as Exhibit C.

32. The third sales training module, The Winning Call, instructs on how a sales representative can gain interest during initial conversations with a potential customer.

33. The fourth sales training module, The Perfect Meeting, teaches how to use a sales call to convert the person on the call into a potential buyer.

34. The fifth sales training module, Bargain to Advance (also called “Gives and Gets”), teaches specific bargaining techniques, including a process Hoffman calls the “Scorecard” system. The Scorecard system is a tool that analyzes sales deals and guides sales representatives to take specific actions to accelerate the sale.

35. The sixth sales training module, Hammer it Closed, focuses on how a sales professional can close a deal resulting in a sale through the use of questioning techniques.

36. The seventh sales training module, The Secret to the Endless Cycle, teaches how to grow the relationship with existing customers including increased sales and renewals through account management functions.

Hoffman’s Sales Management Training Materials

37. Hoffman offers a four part modular sales management training program. Hoffman’s sales management materials are different than his sales training materials in that they are designed to train managers of sales teams, as opposed to training the sales teams directly. Each of the sales management training modules teaches a specific skill related to the management of sales professionals. The modules are arranged in a specific order based on four principles that address each area of management: Leading (or Leadership), Coaching, Inspection (or Analyzing), and Forecasting (or Reporting).

38. The first part of Hoffman’s sales management training program, Leadership, focuses on how sales executives and managers can lead effectively to increase productivity of their sales team. The second part of his sales management training program, Coaching, focuses on specific coaching techniques and effective communication methods for individual sales

professionals. The Inspection section of Hoffman's sales management training program helps sales managers and executives analyze their team's milestones, objectives, and activity metrics. Finally, the fourth part of his sales management training program, Forecasting, teaches sales executives and managers how to accurately forecast and report future sales.

Creation and Ownership of Hoffman's Training Materials

39. From 2002 to 2008, while Hoffman was employed by Basho, he created a number of documents, including various PowerPoint presentations that described his sales training and sales management programs. Over time, Hoffman created several versions of his training materials based on his continually evolving knowledge in the fields of sales and management training.

40. Some of Hoffman's training materials were referred to as "Playbooks." The Playbooks were used by Hoffman and other Basho trainers as teaching tools during Basho's sales and management training programs. The Playbooks were lengthy and detailed PowerPoint presentations, which were often times distributed to clients as paper copies during training programs. Basho clients were not permitted to redistribute the Playbooks or other materials provided by Basho or Hoffman. The Playbooks also contained Notes sections, which were only visible to the Basho sales training professionals.

41. Hoffman created the Playbooks for the following training programs: sales training programs for clients, workshop sales training programs, and sales management training programs.

42. During this 2002 to 2008 timeframe, Hoffman also created two documents that summarized the overall structure of his sales training and management training programs. These two documents were shown or sent to prospective clients as marketing materials. The first of

these documents was a PowerPoint presentation that Hoffman created in 2003 (“Basho Strategies Marketing Presentation”). A true and correct copy of the Basho Strategies Marketing Presentation is attached hereto as Exhibit D.

43. In 2014, Hoffman applied for copyright registration for the Basho Strategies Marketing Presentation. He was granted a copyright registration effective as of January 8, 2015. A true and correct copy of the copyright Certificate of Registration for the Basho Strategies Marketing Presentation is attached hereto as Exhibit E.

44. Hoffman created another marketing document in 2005; a PowerPoint presentation entitled “Basho Strategies Sales Training Program Intro.” The Basho Strategies Sales Training Program Intro summarized the overall structure of Hoffman’s sales training and management training programs. A true and correct copy of the Basho Strategies Sales Training Program Intro is attached hereto as Exhibit F.

45. In 2014, Hoffman applied for copyright registration for the Basho Strategies Sales Training Program Intro. He was granted a copyright registration effective July 24, 2014. A true and correct copy of the copyright Certificate of Registration for the Basho Strategies Sales Training Program Intro is attached hereto as Exhibit G.

46. The Basho Strategies Marketing Presentation and the Basho Strategies Sales Training Program Intro contain concise summaries of Hoffman’s sales training and management training programs. Hoffman, Basho Strategies, Basho Technologies, and MJ Hoffman & Associates have used these documents in marketing, during training presentations, and as the basis of other documents and materials created by Hoffman.

47. Basho employees had access to all of the documents created by Hoffman that described his sales training and management training programs. Basho employees were required

to sign non-compete agreements, which included confidentiality provisions. Accordingly, these employees were granted access, both in paper form and electronically, to Hoffman's sales and management training materials. In addition, Basho employees were not permitted to teach any techniques or materials aside from those provided by Hoffman.

48. MJ Hoffman & Associates owns all title and interest to all presentations, documents, and materials related to sales and management training programs created by or on behalf of Basho, including but not limited to all Playbooks, the Basho Strategies Marketing Presentation and the Basho Strategies Sales Training Program Intro.

Haller was Trained by Hoffman

49. Hoffman met Timothy Haller in 2005 while Haller was a sales manager at Agilent Technologies. At their initial meeting, Hoffman and Haller discussed Basho Strategies' sales training program. At the time, Haller was considering hiring Basho Strategies to train his sales staff at Agilent. During that meeting, Haller expressed his frustration about the difficulty his sales team had making effective cold calls to uncover sales opportunities in existing and new accounts.

50. After the meeting, Agilent hired Hoffman to teach his training class entitled the "Why You? Why You Now? Program." Thereafter, Agilent hired Hoffman and Basho Strategies to teach the WYWYN technique to Agilent's entire global sales force. Over the course of two years, Hoffman trained hundreds of Agilent Technologies' sales representatives throughout the world, including Haller's entire sales staff.

51. Several months after their initial meeting, Haller approached Hoffman and asked if he could join Basho Strategies. Haller confessed that he had never taught sales and wanted to

learn from Hoffman. At that time, Hoffman was the only person at Basho Strategies who was conducting sales training programs. Hoffman decided to hire Haller in February of 2006.

52. After he was hired, Haller received one-on-one training from Hoffman in, among other things, the seven sales training modules and the WYWYN technique of prospecting. This training lasted for approximately six to nine months. As part of Haller's training, Hoffman shared all documents, presentations and materials relating to his sales and management training programs. Throughout his employment with Basho, Haller continued to have access to these works and all Basho training program documents.

53. Specifically, Haller had access to the Basho Strategies Marketing Presentation, the Basho Strategies Sales Training Program Intro, and all of Hoffman's Playbooks.

54. Haller was the first person that Hoffman hired and trained as a sales training instructor. After Haller joined Basho Strategies, Hoffman hired additional individuals and trained them to be sales training instructors. One such individual was Stephen Keys, who presently works with Haller. During the time that Keys worked at Basho Strategies, he had unfettered access to all of Hoffman's sales and management training materials. Specifically, Keys had access to the Basho Strategies Marketing Presentation, the Basho Strategies Sales Training Program Intro, and all of Hoffman's Playbooks.

55. During Haller's employment, one of Basho's clients was Gartner, Inc. ("Gartner"). Haller worked on the Gartner account as a Basho employee.

56. In 2008, Haller left Basho to join Gartner as its sales director. While at Gartner, on information and belief, Haller continued to have access to Basho's sales training programs, which Hoffman was routinely updating, by virtue of the fact that Gartner was a Basho client.

MJ Hoffman & Associates Obtained All Right and Title in the Basho Intellectual Property

57. Basho Technologies transferred ownership of its intellectual property rights in the sales and training materials to Hoffman on or about February 10, 2010. Hoffman has since transferred all right and title to the intellectual property he created while he was at Basho Strategies and Basho Technologies to MJ Hoffman & Associates.

58. MJ Hoffman & Associates has licensed its unique sales and management training programs to two authorized resellers, Kensei Partners, LLC and J. Barrows, LLC.

59. Kensei Partners, LLC is owned by Eric Shaver, who was trained in sales and sales management training techniques by Hoffman at Basho Strategies in approximately 2007. Beginning in 2010, Kensei Partners, LLC, became an authorized reseller of MJ Hoffman & Associates' sales and sales management training programs. Kensei Partners, LLC pays MJ Hoffman & Associates an annual reseller and licensing fee to use MJ Hoffman & Associates' modular sales and sales management training programs.

60. J. Barrows, LLC is owned by John Barrows, who was trained in sales and sales management training techniques by Hoffman at Basho in approximately 2008. Beginning in 2013, J. Barrows, LLC, became an authorized reseller of MJ Hoffman & Associates' sales and sales management training programs. J. Barrows, LLC pays MJ Hoffman & Associates an annual reseller and licensing fee to use MJ Hoffman & Associates' modular sales and sales management training programs.

61. On information and belief, Haller is the only individual who has been trained by Hoffman in sales and sales management training techniques that is operating a sales and sales management training business using the Hoffman training techniques without a license or agreement to use these materials from MJ Hoffman & Associates.

Haller, Operating as “Sales Gauge,” Uses Training Materials That are Nearly Identical to Hoffman’s

62. On information and belief, in April 2009, Haller left Gartner and immediately formed “Sales Gauge” where, among other things, he provided, and continues to provide, teaching materials directed toward sales and sales management training techniques, including “a unique prospecting technique known as Show Me You Know Me.” A true and correct copy of a screenshot of Timothy Haller’s LinkedIn Profile is attached hereto as Exhibit H.

63. On information and belief, Sales Gauge is not a formally structured company. Rather, on information and belief, Sales Gauge is a business name used by Communication Sales Techniques, LLC. On information and belief, Haller promotes and sells “Sales Gauge” sales and management training services through Communication Sales Techniques.

64. Communication Sales Techniques was formed by Pamela Haller, its manager, on October 29, 2009. Timothy Haller was designated as a SOC signatory for Communication Sales Techniques in 2010.

65. On October 27, 2014, Haller became the sole Manager of Communication Sales Techniques. A true and correct copy of the Certificate of Amendment showing Timothy Haller as the sole Manager of Communication Sales Techniques is attached hereto as Exhibit I.

66. Stephen Keys (“Keys”) works with Haller to sell and promote Sales Gauge through Communication Sales Techniques. Keys is currently the Managing Director of Sales Gauge. A true and correct copy of a screenshot of the Sales Gauge website About Us page is attached hereto as Exhibit J.

Defendants Have Continuously and Willfully Infringed Plaintiff's Sales Training Programs

67. On information and belief, as soon as Haller began offering sales training under the Sales Gauge name, his sales training materials were based almost entirely on the materials Hoffman created during his tenure at Basho.

68. On information and belief, Haller used, copied, distributed and created derivative works based on Plaintiff's intellectual property, including, but not limited to, copyrighted materials, authorized derivative works, sales and management training documents and presentations, trade names, and the overall organization and arrangement of Plaintiff's sales and management training programs.

69. On information and belief, Haller's first website related to Sales Gauge was available in 2010. The earliest version of the Sales Gauge website that Plaintiff has been able to locate is dated June 19, 2010. A true and correct copy of a screenshot from Sales Gauge's website dated June 19, 2010 ("6/19/2010 Sales Gauge Website") is attached hereto as Exhibit K.

70. Haller's Sales Gauge program is a modular sales program that began with six "modules." Id. Five out of the six Sales Gauge modules describe the same techniques and use almost verbatim language as that found in Hoffman's works to describe those techniques. The Sales Gauge modules are also in the same order and arrangement as Plaintiff's sales training modules.

71. Defendants' 6/19/2010 Sales Gauge Website incorporated significant portions of the Basho Strategies Marketing Presentation and the Basho Strategies Sales Training Program Intro in descriptions of its sales training program. Any changes or deviations from the Basho Strategies Marketing Presentation and the Basho Strategies Sales Training Program Intro are minor modifications of Plaintiff's works.

72. Defendants used the same selection of sales training topics, the same order, the same arrangement, and the same format as Plaintiff. Defendants' modular approach to sales training included a similar sequential order of presentation of materials.

73. In addition, three out of six of Defendants' modules used the same number as the corresponding module from Plaintiff's program. As the chart below evidences, Plaintiff's and Defendants' fourth modules relate to managing a client or customer meeting, Plaintiff's and Defendants' fifth modules teach bargaining techniques, and Plaintiff's and Defendants' sixth modules discuss how to close a deal.

74. The table below shows a comparison of Plaintiff's Basho Strategies Marketing Presentation (Ex. D) and Defendants' 6/19/2010 Sales Gauge Website (Ex. K), with the highlighted portions showing verbatim and near verbatim copying:

Basho Strategies Marketing Presentation	6/19/2010 Sales Gauge Website
<p><u>Basho Two – "Action is Power™"</u> <i>Above all else, activity determines greatness in sales</i></p> <ul style="list-style-type: none"> • How to unleash massive activity on a consistent basis • How to turn every cold call into a hot one • The meaning behind AIDA • Harnessing the power of momentum selling • How to gain immediate access to power through phone, email <p>IN-CLASS EXERCISES include: Drafting powerful emails LIVE; matching specific solutions with specific buyers; phone and voicemail techniques; creation of compelling "personal connections."</p>	<p>Sales Gauge 1 – "Power Prospecting"</p> <ul style="list-style-type: none"> • How to research executives and get their attention on the first connection • How to institutionalize the process with your CRM during the training • The meaning behind AIDA • Harnessing the power of activity tracking for coaching moments in sales • How to gain immediate access to power through phone and email • Personalized Coaching for sales managers via the web to ensure repeatability <p>IN-CLASS EXERCISES include: Drafting powerful emails LIVE; matching specific solutions with specific buyers; phone and voicemail techniques; creation of compelling "personal connections"</p> <p>Metrics: 8-10% of the executive emails will be responded to</p>
<p><u>Basho Three – "The Winning Call™"</u> <i>Success is a choice</i></p> <ul style="list-style-type: none"> • Gaining interest and curiosity on the first call • How to call high and stay there • The power of rapport building • How to get around gatekeepers 	<p>Sales Gauge 2 – "Flexing Your Social Networking Muscle"</p> <ul style="list-style-type: none"> • Gaining interest and curiosity on the first call • How to use Linked In and Networking to get powerful introductions • How to use powerful reference stories to increase interest

<ul style="list-style-type: none"> • Words that persuade and words that you should never use <p>IN-CLASS EXERCISES include: LIVE cold calling to prospects and customers; crafting a compelling elevator pitch.</p>	<ul style="list-style-type: none"> • The power of reference clients • How to engage gatekeepers to get to the executive <p>IN-CLASS EXERCISES include: LIVE calling to prospects and customers; crafting a compelling set of reference stories for different audiences. Analyzing your personal network and attacking the best prospects based on that analysis.</p> <p>Metric: 10-15% of executive calls will be positively responded to</p>
<p>Basho Four – “The Perfect Meeting™” <i>Selling boils down to “Managing the Moment”</i></p> <ul style="list-style-type: none"> • Establishing urgency by the first meeting • Why people really buy • Effectively managing a customer meeting • How to successfully frame an opportunity • Knowing when to use “open,” “closed,” and “discomfort” qs <p>IN-CLASS EXERCISES include: Effective presentation skills; how to establish value over benefits and features; how to effectively develop a forecast.</p>	<p>Sales Gauge 4 – “Maximizing Your Value to Increase the Sale”</p> <ul style="list-style-type: none"> • Establishing urgency by the first meeting • Why people really buy • Effectively managing a customer meeting • How to successfully frame an opportunity • Knowing when to use “open,” “closed,” and “apprehension” questions <p>IN-CLASS EXERCISES include: How to establish value over benefits and features; how to prepare for that important meeting. Application of the techniques to your deal and phone meetings to uncover the information and VALUE in the sale</p>
<p>Basho Five – “Bargain to Advance™” <i>Before there is buying, there is asking</i></p> <ul style="list-style-type: none"> • Gaining early commitments through consistent bargaining • How to transfer ownership to the prospect • How to ID your coach, sponsor, and champion • How to effectively use a demo or trial • Modern Persuasion Techniques I: Commitment, Consistency, and Reciprocation <p>IN-CLASS EXERCISES include: Building a customized bargaining checklist; creating a formal negotiation strategy; introduction to NLP and modern persuasion techniques.</p>	<p>Sales Gauge 5 – “Do We Have a Deal or Not?”</p> <ul style="list-style-type: none"> • Gaining early commitments through matched value requests • Quickly conclude if your deals are real, stuck or ready to close • How to transfer ownership to the prospect • How to ID your fan, sponsor, and champion • How to effectively use demos for trial closes • Modern Persuasion Techniques I: Commitment, Consistency, and Reciprocation <p>IN-CLASS EXERCISES include: Building a customized Deal or NO Deal checklist; creating a strategy that keeps deals moving and ensures increased velocity in the pipeline</p>
<p>Basho Six – “Hammer it Closed™” <i>The strongest close is the effortless one</i></p> <ul style="list-style-type: none"> • Objection handling strategies • How to effectively trial close • How to distinguish yourself from the competition • When (and how) to discount • Modern Persuasion Techniques II: Authority, Contrast, and Scarcity <p>IN CLASS-EXERCISES include: Objection handling techniques; recognizing buying signs throughout the sales cycle; competitive positioning.</p>	<p>Sales Gauge 6 – “Authoritative Closing”</p> <ul style="list-style-type: none"> • Objection handling strategies • How to effectively close • How to distinguish yourself from the competition • When (and how) to discount • A formal preparation process to the close that ensures you are ready <p>IN-CLASS EXERCISES include: Objection handling techniques; recognizing buying signs throughout the sales cycle; competitive positioning.</p>

75. Defendants' 6/19/2010 Sales Gauge Website (Ex. K) similarly copied from the Basho Strategies Sales Training Program Intro (Ex. F), as shown in the chart below with the highlighted portions showing verbatim and near verbatim copying:

Basho Strategies Sales Training Program Intro	6/19/2010 Sales Gauge Website
<p>PROSPECTING</p> <p>WHY YOU? WHY YOU NOW?TM</p> <p>Our unique approach to prospecting empowers sales reps to convert a territory of possibilities into a continual flow of leads. We master effective management of the pipeline, so that our energy, enthusiasm and action yield massive results. Learn how to:</p> <ul style="list-style-type: none"> •Unleash massive activity on a consistent basis. •Turn every cold call into a hot one. •Use proven AIDA techniques. •Harness the power of momentum selling. <p>IN-CLASS EXERCISES: developing solutions for specific buyers; email, phone and voicemail techniques; creating compelling "personal connections" with your prospects.</p>	<p>Sales Gauge 1 – "Power Prospecting"</p> <ul style="list-style-type: none"> • How to research executives and get their attention on the first connection • How to institutionalize the process with your CRM during the training • The meaning behind AIDA • Harnessing the power of activity tracking for coaching moments in sales • How to gain immediate access to power through phone and email • Personalized Coaching for sales managers via the web to ensure repeatability <p>IN-CLASS EXERCISES include: Drafting powerful emails LIVE; matching specific solutions with specific buyers; phone and voicemail techniques; creation of compelling "personal connections"</p> <p>Metrics: 8-10% of the executive emails will be responded to</p>
<p>QUALIFYING</p> <p>THE WINNING CALLTM</p> <p>Here, reps learn how to maximize impact when time is a premium. We master the skills of attracting and sustaining interest in the audience, and turn leads into prospects. Learn how to:</p> <ul style="list-style-type: none"> •Call high and stay there. •Use the power of rapport building. •Get around gatekeepers. •Use words that persuade and avoid words that don't. <p>IN-CLASS EXERCISES: LIVE cold calling to prospects and customers; crafting a compelling elevator pitch.</p>	<p>Sales Gauge 2 – "Flexing Your Social Networking Muscle"</p> <ul style="list-style-type: none"> • Gaining interest and curiosity on the first call • How to use Linked In and Networking to get powerful introductions • How to use powerful reference stories to increase interest • The power of reference clients • How to engage gatekeepers to get to the executive <p>IN-CLASS EXERCISES include: LIVE calling to prospects and customers; crafting a compelling set of reference stories for different audiences. Analyzing your personal network and attacking the best prospects based on that analysis.</p> <p>Metric: 10-15% of executive calls will be positively responded to</p>
<p>DISCOVERING</p> <p>THE PERFECT MEETINGTM</p> <p>Graduates of this program acquire superior presentation skills designed to facilitate the executive-level conversation.</p>	<p>Sales Gauge 4 – "Maximizing Your Value to Increase the Sale"</p> <ul style="list-style-type: none"> • Establishing urgency by the first meeting • Why people really buy • Effectively managing a customer meeting

<p>Reps will learn key communication strategies to “frame” opportunities, qualify buyers and handle objections. Learn how to:</p> <ul style="list-style-type: none"> • Establish urgency on the first call. • Effectively manage a customer meeting. • Use “open,” “closed,” and “discomfort” questions. <p>IN-CLASS EXERCISES: effective presentation skills; how to establish value over benefits and features; how to effectively begin your forecast.</p>	<ul style="list-style-type: none"> • How to successfully frame an opportunity • Knowing when to use “open,” “closed,” and “apprehension” questions <p>IN-CLASS EXERCISES include: How to establish value over benefits and features; how to prepare for that important meeting. Application of the techniques to your deal and phone meetings to uncover the information and VALUE in the sale</p>
<p>NEGOTIATING</p> <p>GIVES AND GETS™</p> <p>Reps will learn how to create an ideal environment for successful negotiations. Our proprietary bargaining technique, Scorecard™, directs engagement in the proposal stage and how to advance the sales process. Learn how to:</p> <ul style="list-style-type: none"> • Transfer ownership to the prospect. • Identify the coach, sponsor, and champion. • Effectively use a demo or trail. • Use Modern Persuasion Techniques I: Commitment, Consistency, and Reciprocation. <p>IN-CLASS EXERCISES: building a custom bargaining checklist; creating a formal negotiation strategy; introduction to NLP and modern persuasion techniques.</p>	<p>Sales Gauge 5 – “Do We Have a Deal or Not?”</p> <ul style="list-style-type: none"> • Gaining early commitments through matched value requests • Quickly conclude if your deals are real, stuck or ready to close • How to transfer ownership to the prospect • How to ID your fan, sponsor, and champion • How to effectively use demos for trial closes • Modern Persuasion Techniques I: Commitment, Consistency, and Reciprocation <p>IN-CLASS EXERCISES include: Building a customized Deal or NO Deal checklist; creating a strategy that keeps deals moving and ensures increased velocity in the pipeline</p>
<p>CLOSING</p> <p>HAMMER IT CLOSED™</p> <p>By studying the effects of over 20 powerful closes, reps will learn how to implement concepts of reciprocity and urgency, earning them the right to “ask for the order.” Learn how to:</p> <ul style="list-style-type: none"> • Use proven objection-handling strategies. • Distinguish yourself from the competition. • Discount (and when). • Use Modern Persuasion Techniques II: Authority, Contrast, and Scarcity. <p>IN-CLASS EXERCISES: objection handling techniques; recognizing buying signs throughout the sales cycle; competitive positioning.</p>	<p>Sales Gauge 6 – “Authoritative Closing”</p> <ul style="list-style-type: none"> • Objection handling strategies • How to effectively close • How to distinguish yourself from the competition • When (and how) to discount • A formal preparation process to the close that ensures you are ready <p>IN-CLASS EXERCISES include: Objection handling techniques; recognizing buying signs throughout the sales cycle; competitive positioning.</p>

76. Hoffman first became aware that Defendants’ website was displaying this copied content in 2010. At that time, he contacted Haller and asked him to cease copying both the content and the arrangement of Plaintiff’s sales training materials.

77. Over the years, Hoffman has asked Haller to refrain from copying his materials on more than one occasion. Despite these requests, just last year, Haller was still posting marketing

material similar to his 2010 website on the Internet. For example, in April 2014, a PowerPoint presentation was posted on Haller's LinkedIn page that was nearly identical to the content from the 6/19/2010 Sales Gauge Website as shown in the above charts. A true and correct copy of a screenshot of the "2014 Sales Gauge LinkedIn Slides" saved as a Word document is attached hereto as Exhibit L.

78. On information and belief, Defendants have been using, distributing, copying and making derivative works of the 2014 Sales Gauge LinkedIn Slides during the last three years.

79. Defendants' 2014 Sales Gauge LinkedIn Slides contained verbatim copying of Plaintiff's copyrighted works, the Basho Strategies Marketing Presentation and Basho Strategies Sales Training Program Intro. Any changes in Defendants' slides were only minor modifications to Plaintiff's works. Defendants used the same selection of sales training topics, the same order, the same format and the same arrangement as Plaintiff's copyrighted works. Defendants' modular approach to sales training included a similar sequential order of presentation of materials.

80. As was the case with respect to Defendants' June 19, 2010 copying, three out of Defendants' six modules in the 2014 Sales Gauge LinkedIn Slides used the same number as the corresponding module from Plaintiff's program. Plaintiff's and Defendants' fourth modules relate to managing a client or customer meeting, Plaintiff's and Defendants' fifth modules teach bargaining techniques, and Plaintiff's and Defendants' sixth modules teach how to close a deal.

81. The Sales Gauge website and some publically available Sales Gauge materials had minor modifications and revisions in the last several years. Despite such modifications and revisions, a substantial amount of Defendants' publically available materials regarding his sales training program have continued to be substantially similar to Plaintiff's sales training materials.

Defendants' publically available descriptions of its sales training program continued to have the same selection of sales training techniques in the same order, arrangement and format as Plaintiff's techniques described in the Basho Strategies Marketing Presentation and Basho Strategies Sales Training Program Intro copyrighted works.

82. Defendants' current website contains a brochure describing the Sales Gauge sales training program with seven modules, which continue to use the same selection of sales training topics, the same order, and the same arrangement as Plaintiff's sales training modules. A true and correct copy of the Sales Gauge sales training brochure is attached hereto as Exhibit M.

83. Defendants' current modular approach to sales training includes a similar sequential order of presentation of materials as Plaintiff's sales training program.

84. In addition, three of Defendants' modules in Defendants' current sales training program continue to use the same number as the corresponding module from Plaintiff's program.

85. Defendants' modular sales training program also includes live application and testing during training sessions. See id. On information and belief, Defendants are able to conduct such live application and testing due to the use and copying of Plaintiff's training materials.

86. Defendants' current publically available descriptions of its sales training program continue to use verbatim and near verbatim copying from Plaintiff's Basho Strategies Marketing Presentation and Basho Strategies Sales Training Program Intro.

87. Defendants' teaching materials are not publicly available. However, Defendants' continued copying of Plaintiff's materials from the inception of Defendants' Sales Gauge business demonstrates Defendants' pattern of copying Plaintiff's materials. Therefore, on information and belief, Defendants are using, copying, distributing, and creating derivative

works based on documents created by Hoffman, including but not limited to Hoffman's Playbooks.

The Defendants Have Continuously and Willfully Infringed Plaintiff's Sales Management Training Programs

88. In addition to Plaintiff's sales training modules, Defendants have continued a pattern of copying by also copying the same selection of topics, order and arrangement of Plaintiff's sales management training programs.

89. Sales Gauge's current website contains a brochure which describes Sales Gauge's sales management training program. A true and correct copy of the Sales Gauge sales management training brochure is attached hereto as Exhibit N.

90. Sales Gauge's sales management training brochure describes six areas relating to sales management, the first four of which are discussed in the same manner, order and arrangement, and with the same titles, as Plaintiff's sales management training materials.

91. The first four of Defendants' six management training program titles are verbatim copies of Plaintiff's sales management training program titles with the same order and arrangement.

92. On information and belief, Defendants are copying, distributing, reproducing, and creating derivative works based on Plaintiff's copyrighted materials relating to Plaintiff's sales management training program, including but not limited to Basho Strategies Marketing Presentation, Basho Strategies Sales Training Program Intro and Hoffman's Playbooks.

Defendants' Use of Confusingly Similar Trade Names

93. In Sales Gauge's second module, the marks "SHOW ME YOU KNOW ME" and "SMYKM" are used to refer to a specific prospecting technique.

94. MJ Hoffman & Associates uses the marks WHY YOU? WHY YOU NOW? and WYWYN in the second module of its sales training program which also relates to prospecting techniques.

95. Sales Gauge's mark SHOW ME YOU KNOW ME, which on information and belief is a mark for which Defendants have not sought federal trademark protection, is used in the identical manner and to describe the same type of services as MJ Hoffman & Associates' mark WHY YOU? WHY YOU NOW?

96. SHOW ME YOU KNOW ME and WHY YOU? WHY YOU NOW? are both used in the parties' prospecting module of their sales training programs. On information and belief, they both refer to nearly identical techniques used by a sales professional to gain a potential customer's attention.

97. Sales Gauge's mark SHOW ME YOU KNOW ME is confusingly similar to MJ Hoffman & Associates' registered federal trademark WHY YOU? WHY YOU NOW? in the following manner: they both have five words, the words in each mark average three letters, and they contain repeating words.

98. Sales Gauge's mark SMYKM, which on information and belief is a mark for which Defendants have not sought federal trademark protection, is used in the identical manner and to describe the same type of services as MJ Hoffman & Associates' mark WYWYN.

99. Sales Gauge's mark SMYKM is confusingly similar to MJ Hoffman & Associates' mark WYWYN in the following manner: they both contain five letters, they both contain repeating letters and they both contain the letter "Y."

100. In addition, SMYKM contains two “M”s and WYWYN contains two “W”s, which contributes to the confusion between the marks. The letters M and W are visually similar in that M is simply an inverted W.

101. Defendants distribute their sales training and management training materials, all of which infringe MJ Hoffman & Associates’ intellectual property, through a variety of channels, including but not limited to the Sales Gauge website, social media websites, podcasts, and speaking engagements.

102. There is substantial overlap between the channels of distribution and the customer-base for Defendants’ materials and Plaintiff’s materials.

103. On information and belief, a substantial portion of Defendants’ revenues and profits are directly related to its use of MJ Hoffman & Associates’ sales and management training programs.

COUNT ONE
COPYRIGHT INFRINGEMENT UNDER 17 U.S.C. § 101 *et seq.*
OF THE BASHO STRATEGIES MARKETING PRESENTATION

104. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

105. Plaintiff is the sole owner of a valid copyright in the Basho Strategies Marketing Presentation.

106. Defendants had full access to Plaintiff’s copyrighted work from 2003 until 2008.

107. Defendants are reproducing the copyrighted work, distributing copies of the copyrighted work to the public, offering to display the copyrighted work to the public, and creating derivative works based on the copyrighted work.

108. The actions of Defendants directly, contributorily, and/or vicariously infringe Plaintiff's exclusive rights granted by 17 U.S.C. § 106 to display, reproduce, distribute, and prepare derivative works based on Plaintiff's copyrighted work.

109. Plaintiff has not granted an assignment or license of rights in the copyrighted work to Defendants. Defendants' continued use of the copyrighted work, therefore, is done without the permission or consent of the copyright owner, MJ Hoffman & Associates.

110. Such actions and conduct by the Defendants constitute willful copyright infringement under 17 U.S.C. § 504.

111. As a direct and proximate cause of Defendants' infringement, Plaintiff has suffered and continues to suffer money damages in an amount to be proven at trial.

112. As a result of the copyright infringement described above, Plaintiff is entitled to relief including, but not limited to, injunctive relief, actual damages, and disgorgement of Defendants' profits, or statutory damages, statutory costs and attorneys' fees, and prejudgment interest under 17 U.S.C. § 502 et seq.

113. Furthermore, Plaintiff is entitled to statutory damages under 17 U.S.C. § 504(c) and attorney's fees and costs under 17 U.S.C. § 505.

COUNT TWO
COPYRIGHT INFRINGEMENT UNDER 17 U.S.C. § 101 et seq.
OF BASHO STRATEGIES SALES TRAINING PROGRAM INTRO

114. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

115. Plaintiff is the sole owner of a valid copyright in the Basho Strategies Sales Training Program Intro.

116. Defendants had full access to Plaintiff's copyrighted work from 2005 until 2008.

117. Defendants are reproducing the copyrighted work, distributing copies of the copyrighted work to the public, offering to display the copyrighted work to the public, and creating derivative works based on the copyrighted work.

118. The actions of Defendants directly, contributorily, and/or vicariously infringe Plaintiff's exclusive rights granted by 17 U.S.C. § 106 to display, reproduce, distribute, and prepare derivative works based on Plaintiff's copyrighted work.

119. Plaintiff has not granted an assignment or license of rights in the copyrighted work to Defendants. Defendants' continued use of the copyrighted work, therefore, is done without the permission or consent of the copyright owner, MJ Hoffman & Associates.

120. Such actions and conduct by the Defendants constitutes willful copyright infringement under 17 U.S.C. § 504.

121. As a direct and proximate cause of Defendants' infringement, Plaintiff has suffered and continues to suffer money damages in an amount to be proven at trial.

122. As a result of the copyright infringement described above, Plaintiff is entitled to relief against Defendants including, but not limited to, injunctive relief, actual damages, and disgorgement of Defendants' profits, or statutory damages, statutory costs and attorneys' fees, and prejudgment interest under 17 U.S.C. § 502 *et seq.*

123. Furthermore, Plaintiff is entitled to statutory damages under 17 U.S.C. § 504(c) and attorney's fees and costs under 17 U.S.C. § 505.

COUNT THREE
TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1114 *et seq.*
OF THE REGISTERED TRADEMARK WHY YOU? WHY YOU NOW?

124. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

125. Defendants use a confusingly similar mark to Plaintiff's federally registered mark in violation of 15 U.S.C. § 1114.

126. Plaintiff uses the federally registered mark WHY YOU? WHY YOU NOW? in commerce to promote, advertise, sell, and identify the source of its unique sales prospecting training.

127. Defendants use the confusingly similar mark SHOW ME YOU KNOW ME in commerce to promote, advertise, and sell a sales prospecting training.

128. Defendants' use of the mark SHOW ME YOU KNOW ME is likely to cause confusion, deception, and mistake by creating the false and misleading impression that Defendants' goods and services are provided and distributed by Plaintiff, or are associated or connected with Plaintiff, or have the sponsorship, endorsement or approval of Plaintiff.

129. Defendants and Plaintiff sell their services through the same channels of trade.

130. Defendants' actions have caused injury to Plaintiff's goodwill and reputation.

131. Defendants were aware of Plaintiff's use of, and rights in, the federally registered mark WHY YOU? WHY YOU NOW? and as such, Defendants' use of a confusingly similar mark was done willfully, intentionally, and maliciously.

132. Defendants have caused and are likely to continue to cause substantial injury to the public and to Plaintiff. Plaintiff is entitled to injunctive relief and to recover Defendants'

profits, actual damages, enhanced profits, costs, and reasonable attorneys' fees under 15 U.S.C. §§ 1114, 1116 and 1117.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff MJ Hoffman and Associates, LLC, respectfully requests that this Court enter an order:

A. Permanently enjoining Defendants and all of its agents, officers, employees, representatives, successors, assigns, attorneys, and all other persons acting for, with, by, through, or under authority from Defendants, or in concert or participation with Defendants, from:

1. Using the SHOW ME YOU KNOW ME mark or any other copy, reproduction or colorable imitation or simulation of Plaintiff's WHY YOU? WHY YOU NOW? mark in connection with Defendants' goods or services; and

2. Using, reproducing, distributing, and preparing derivative works based upon Plaintiff's copyrighted works, including the Basho Strategies Marketing Presentation and Basho Strategies Sales Training Program Intro;

B. Awarding to Plaintiff damages, including actual, compensatory, statutory, and punitive damages where applicable in an amount to be determined at trial;

C. Awarding to Plaintiff its reasonable litigation expenses and attorneys' fees;

D. Awarding to Plaintiff pre- and post-judgment interest, to the extent allowable; and

E. Awarding such other further relief as equity and justice may require.

DEMAND FOR JURY TRIAL

MJ Hoffman & Associates, LLC demands a jury trial for all issues so triable.

MJ HOFFMAN AND ASSOCIATES, LLC

By its attorneys,

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Dated: February 18, 2015